IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 8207 of 2005(B)

AGAINST THE ORDER IN IA 2392 2004 IN OS.313/1995 of SUB COURT, MAVELIKKARA

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PETITIONER:

1. KRISHNA KARANAVAR,
S/O. MADHAVAN PILLAI, NOW RESIDING AT
KANNILETHU HOUSE, NEENDOOR MURI,PALLIPPADU VILLAGE
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

2. AMBIKAMMA, W/O. KRISHNA KARANAVAR, -DO-

3. VISWANATHAN, S/O.KRISHNA KARANAVAR -DO-.

BY ADV. DR.P.S.KRISHNA PILLAI
SRI.H.VINOD

RESPONDENTS:

1. S.BINDHU @ CHANDRAMATHI BINDHU,
D/O. BHARATHI AMMA, CHANDRAMATHI,
KOTTAPPURATHU PUTHEN PURAKKAL HOUSE,NEENDOOR MURI,
PALLIPPADU P.O., PALLIPPADU VILLAGE,
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

2. BABY, S/O. GEEVARGHESE,
MOOTHAMBACKAL HOUSE, PULLAMKADU, PALLIPPADU P.O.,
PALLIPPADU, KARTHIKAPPALLY TALUK,ALAPPUZHA DIST.

3. PONNAMMA, W/O. THOMAS,
CHIRATTAPPARAMBIL HOUSE, KUZHIKKALA MURI,
MALLAPPUZHASSERY VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT.

4. KUTTAPPAN NAIR, S/O. KESAVAN NAIR,
MADATHILKIZHAKKE PUTHEN VEETTIL,NADUVATTOM MURI,
PALLIPPADU P.O., PALLIPPADU VILLAGE,
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

BY ADV. SMT.A.R.USHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

W.P(C) NO. 8207/2005

Ext.P1: True copy of the plaint dated 17-7-1995

Ext.P2: True copy of the affidavit in I.A. No. 624/2003

Ext.P2(a): True copy of the petition in I.A. No. 624/2003 dated 21-2-2003

Ext.P3: True copy of the FIR index Register in Crime No. 27/1975

Ext.P4: True copy of the objection dated 5-3-2003

Ext.P5: True copy of the amended written statement.

Ext.P6: True copy of the judgment dated 30-3-2004

Ext.P7: True copy of the affidavit in I.A No. 2392/2004 dated 30-9-2004

Ext.P7(a): True copy of the petition in I.A No. 2392/2004 dated 3-10-2004

Ext.P8: True copy of the counter affidavit dated 19-10-2004

Ext.P9: True copy of the order dated 6-11-2004 in I.A No. 2392/2004

//True copy//

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PIUS C. KURIAKOSE, J.

W.P.(C) NO. 8207 of 2005

Dated this the 2nd day of August, 2007

JUDGMENT

Ext.P9 order by which the learned Sub Judge allowed a thorough amendment of the suit so as to change the respondent's date of birth, her name, her initials, her father's name and such relevant particulars, is under challenge in this proceedings under Article 227 of the constitution initiated by the defendants. Dr.P.S. Krishna Pillai, the learned counsel for the petitioners has addressed me very strenuously and elaborately. I have heard the submissions of Smt.A.R.Usha, the learned counsel for the respondent also. Sri.Krishna Pillai submitted that the impugned order will result in serious prejudice to the petitioner in as much as the same may enable the plaintiff to get over the bar of limitation which has already set in agaisnt the reliefs sought for in the suit. The learned counsel relied on **Sampath Kumar v. Ayyakannu and Another (2002 (7) Supreme Court Cases 559**) and submitted that Ext.P9 order should be made prospective in opperation i.e. with effect from the date of the amendment application and not earlier. Counsel submitted that the orders of the statutory authorities passed pursuant to the judgment of

this court in Ext.P6 judgment were without notice to the petitioner and behind the back of the petitioners and therefore the petitioners should be permitted to challenge those orders in the suit itself since successful challenge of those orders can lead to dismissal of the suit itself. Counsel submitted that the impugned order has been passed by the learned Sub Judge in a very casual manner as if all amendment applications whenever filed will have to be allowed by the learned Sub Judge.

3. Smt.Usha the learned counsel for the respondent would support the impugned order. According to her, the principles governing exercise of powers under Order 6 Rule 17 have been kept in mind by the learned Sub Judge. It cannot be said that any injustice or prejudice will be occasioned if the order is not set aside.

4. I have considered the rival submissions made at the bar. I do not find any patent illegality about the impugned order warranting corrections under Article 227 of the Constitution. However, I agree with Mr. Krishna Pillai's alternative submission that the learned Sub Judge was too soft in the matter of imposition of cost. I modify Ext.P9 order to the extent of enhancing the cost which is presently ordered as Rs.500/- by Rs.2,500/-.(Rs.Two Thousand Five Hundred only) The total cost of Rs.3,000/- (Three Thousand) will be paid by the 1st

respondent (plaintiff) to the petitioners either directly or through counsel in this court within one month from today, failing which the amendment application will stand dismissed. The learned Sub Judge will afford sufficient opportunities to the petitioners for filing the additional written statement. It is open to the petitioners to raise contentions through additional written statement in challenge of orders of the statutory authority allowing corrections of the date of birth of the 1st respondent. All legally available contentions should be permitted to be raised by the petitioners.

The writ petition is disposed of as above . No costs.

PIUS C. KURIAKOSE,
JUDGE.

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